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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,269	03/19/2004	Stephen G. Armstrong	P68.2-11514-US01	7435
490 7590 09/19/2008 VIDAS, ARRETT & STEINKRAUS, P.A. SUITE 400, 6640 SHADY OAK ROAD EDEN PRAIRIE, MN 55344				
EXAMINER				
MORGAN JR, JACK HOSMER				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
09/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/804,269

Applicant(s)

ARMSTRONG, STEPHEN G.

Examiner

JACK H. MORGAN JR

Art Unit

3782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 7, 23-28 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 7, 23-28 and 31-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claim 33 is withdrawn in view of a new interpretation of previously cited references Huffer (US 2003/0152296 A1) and Haberman (US 6,116,457). As such, this action is NON-FINAL.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 6-7, 23-24, 26-28 and 31-32 are rejected under 35 U.S.C. 102(b) as being anticipated by Huffer (US 2003/0152296 A1). Huffer discloses a reclosable bag (Fig 1) having a bag portion defining a bag interior and a bag opening (28), the bag opening being configured to be selectively opened and closed, a slider (38) positioned in the bag opening, the slider including a passageway (Fig 5A, 76) to provide access to the bag interior, a valve (80) positioned on the slider and configured to selectively open (when it bursts) and close (before bursting) the passageway (examiner further notes that the valve, being still attached to the passageway after bursting is capable of being placed back in its closed position, insofar as applicant's claims set forth the degree to which the passageway must be closed), the valve and passageway being configured to permit gas and liquid to be removed from the bag when suction is applied to the area

outside the bag (examiner notes that the passageway is merely a tube, and a tube is configured to act in the manner claimed by applicant). The valve of Huffer is a one way air valve (it will not burst due to low pressure in the bag) and the passageway is sized and shaped to accept a removable suction device (such as a straw). Huffer further discloses opposed interlocking features along the bag opening which are engaged and disengaged as the slider moves, the slider having opposed side faces (either side of 42) which are configured to slidably engage with the opposed interlocking features along the bag opening.

In regards to claims 26-28, the slider has a shape complementary to the shape of the end of the bag opening to permit the slider to seal against the end of the bag opening [0027] and a first detent (62) on the slider and second detent (60) on the bag are proximate to the end of the bag opening and are configured to engage one another.

3. Claims 1, 2, 7, 23-28, 31 and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Savicki (WO 02/076258). Savicki discloses a reclosable bag (Fig 1) having a bag portion with an interior and an exterior, an opening configured to be selectively opened and closed by a slider (134), the bag having opposed interlocking features (130, 132) and further including a passageway in said slider (Fig 3, 197) and an air valve for opening and closing the passageway (198). The passageway is configured to be coupled to a suction device, such as a user's mouth (examiner notes that the valve could be pressed down by a user's tongue in this scenario and moreover

notes that this relationship is only functional, and that no such suction device is claimed).

With respect to claim 2, examiner notes that in addition to this press-down valve, Savicki also discloses more traditional one-way valves (see [0065], last sentence).

With respect to claims 23-28, Savicki discloses a slider having a passageway and a valve (as set forth in the above 102(b) rejection), and further discloses opposed interlocking features (Fig 2) comprising a tongue (164, 165) and groove (between 175 and 176) sized and shaped to form a seal when engaged, and said element comprising a slider in the bag opening, said slider having opposed side faces configured to slidably engage with the interlocking features of the seal (See Fig 1-3) and the slider having a shape complementary to the shape of the end of the bag opening to permit the slider to seal against the end of the bag opening (Figs 6-8), the slider containing a first detent (252) and the bag having a second detent (136) configured to engage one another (Fig 8) by producing a snap fit when the slider is moved into the closed position (Fig 7).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Savicki (WO 02/076258). Savicki discloses all the limitations of the claim including a one way valve ([0065]) but does not disclose the valve being configured to allow access into the bag interior from an outside area and to block access from the bag interior to the outside area. Examiner notes that the general valve of Savicki is a two way valve and further that Savicki is silent to the direction of the one way valves disclosed in paragraph 65, but notes that it is known in the bag art to both have valves directed towards allowing bags to be inflated, as well as pressure release valve to allow air to escape from the bag. Therefore, examiner takes official notice that it would have been obvious to one of ordinary skill in the art at the time of invention to create the bag of Savicki with the one way valve configured to allow access into the interior from the exterior and to block access from the interior to the outside area in order to add matter into the bag without allowing it to escape.

5. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Huffer (US PG-Pub 2003/0152296A1) in view of Haberman (US 6,116,457). Huffer discloses

all the limitations of the claims except including the steps of inserting a tube into the passageway, applying suction to the free end of the tube and removing the tube from the passageway. Haberman discloses a pouch having a hollow tube inserted into an orifice which can then have suction applied (Col 4, lines 3-5) to withdraw gas and liquid from the pouch. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to create the recloseable bag of Huffer with the hollow tube of Haberman in order to draw gas and liquid out of the bag.

Response to Arguments

6. Applicant's arguments filed May 16, 2008 have been fully considered but they are not persuasive. Applicant's arguments with respect to Greene and Ohtsubo are moot in view of the new grounds of rejection which do not include those two references.

7. With respect to Savicki, applicants argue that Savicki does not explicitly disclose using one's mouth to suction out gas and liquid from the bag. Examiner agrees, however, the valve of Savicki is capable of operating in such a manner, as noted above, if the tongue is used in place of the finger of Savicki. The rejected claims merely require the device to be capable of this, and the valve/passageway of Savicki is capable of it. Moreover, if the alternate one-way valve disclosed by Savicki is used instead of the push valve, the use of the tongue to push down is not required at all, and mere suction would suffice. As such, applicant's arguments with respect to Savicki are not persuasive.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

9. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F. R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JACK H. MORGAN JR whose telephone number is (571)272-3385. The examiner can normally be reached on M-Th 8-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jack H Morgan
Examiner
Art Unit 3782

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782